

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re AMANDA S., a Person Coming
Under the Juvenile Court Law.

B192942
(Los Angeles County
Super. Ct. No. CK55800)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOANNA V.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Debra Losnick, Commissioner. Affirmed.

M. Elizabeth Handy, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel, and Liana Serobian, Senior Associate County Counsel, for Plaintiff and Respondent.

Joanna V. appeals the dependency court order summarily denying her petition for modification under section 388 of the Welfare and Institutions Code, as to her three children, Amanda, Jacob, and Mary.¹ Her children's presumed father is not a party to the appeal. We find no abuse of discretion, and affirm.

FACTS AND PROCEDURAL HISTORY

Amanda was born April 2001, Jacob in June 2002, and Mary in May 2004. The family first came to the attention of the Department of Children's Services (Department) after both Mary and Joanna tested positive for amphetamine when Mary was born. Joanna denied using drugs and maintained that the test results arose from her being "around some people that were smoking drugs" prior to Mary's birth. The Department initially offered her voluntary family maintenance services, on condition that she participate in a drug treatment program and drug testing. Some of her female relatives offered to help with the children. She was not supposed to be alone with the children until she produced two clean drug tests. She failed to enroll in a program and did not show up for appointments for drug testing. When the caseworker visited the home, she twice found Joanna alone with the children. She also smelled an odd odor. Law enforcement officers took the children into protective custody. They said "that the home smelled as if somebody had been using drugs."

On June 18, 2004, a detention report and dependency petition pursuant to section 300 were filed. The children were ordered detained. Ten days later, they were placed with their maternal great-grandmother, Justina V. She had an appropriate home for them and was relatively young, 65 years old.²

According to a Department report in August 2004, Joanna now admitted that she used methamphetamine before and during her pregnancy with Mary. She said she was willing to do whatever the court ordered her to do. She was 24 years old, had dropped out

¹ Subsequent code references are to the Welfare and Institutions Code unless otherwise stated.

² A subsequent report indicated that Justina had raised six children of her own and had assisted in raising other relatives.

of high school in the 11th grade, and had not completed a GED. The section 300 petition was sustained that month. Joanna was granted family reunification services and monitored visits. She was ordered to participate in individual counseling, parenting education, drug counseling and random drug testing.

A February 2005 report indicated that there was an outstanding bench warrant for Joanna, due to an April 2004 arrest for possession of drug paraphernalia. She missed many of her appointments with the caseworker and provided false information about her participation in drug testing and a drug treatment program. In actuality, she failed to enroll in a drug program, attended only two sessions of a parenting class, and showed up only once for drug testing, missing tests on 11 other dates. She visited the children frequently but failed to schedule the visits in advance. She sometimes appeared at Justina's home at late hours. Meanwhile, the children were thriving and happy in Justina's care. Other family members were helping Justina to care for them. The only problem was that Amanda was fearful about being removed from her family, often awakened at night, and cried and clung to her female relatives when they left her presence. The Department recommended termination of family reunification services, as Joanna had made "minimal efforts" to correct her problems, and there was no confirmation that she had ceased to use illicit drugs.

Just before the February 2005 hearing, "last-minute" information indicated that when the caseworker had attempted to visit Joanna at the home of Joanna's mother, the mother said that Joanna no longer lived there, and she did not know how to contact her.

At the February 2005 hearing, the court found that Joanna was not in compliance with the case plan. It terminated reunification services and scheduled a section 366.26 permanency planning hearing. Monitored visits by Joanna were allowed to continue.

The report for the June 1, 2005 section 366.26 hearing stated that Joanna visited the children several times a week. She played or watched television with them, but she left it to Justina to clean up after them and to change Mary's and Jacob's diapers. She had less interest in Mary than in the two older children. She pressured Justina to let her take the children out of the house without a monitor, which was contrary to court order. The lateness of some of the visits made it difficult for Justina to put the children to bed. Meanwhile, the

children and Justina had developed a strong bond with each other. They had lived in Justina's home for a year and were doing well in all respects, except for Amanda's sleep problems and fears about being removed from her family. The children also had excellent relationships with other members of the large extended family, who frequently visited Justina's home. Justina wanted to be the children's legal guardian, and that is what the Department recommended.

At the section 366.26 hearing, the court found that return of the children to Joanna would be detrimental to their well-being. It ordered the permanent plan of legal guardianship and appointed Justina as the children's guardian. It did not terminate parental rights and permitted Joanna's monitored visits to continue.

According to an August 2005 status review report, Amanda said she enjoyed Joanna's visits, but awakened with nightmares about Joanna's "falling into a hole." A referral was made for counseling. Justina still complained that Joanna did not help to clean up after the children during her visits.

A February 1, 2006 report indicated that Joanna had failed to respond to the caseworker's numerous requests to be contacted. She still made irregular, inconsistent and unscheduled visits. Justina continued to provide the children with a loving, stable and nurturing home. Amanda and Jacob were doing well at their early education center. Amanda was responding well to counseling for her anxiety and sleep issues and had slept through the night for one month.

At the hearing on February 1, 2006, Joanna's counsel told the court that Joanna had been visiting the children more often, was now participating in parenting and drug counseling, and planned to start individual counseling. The court continued the existing permanent plan of legal guardianship.

On July 20, 2006, Joanna filed the section 388 petition that is the subject of this appeal. According to the petition, Joanna had been sober since February 2006, had visited the children daily since that time, had assisted with their care, had completed a parenting class earlier that month, and would complete a drug treatment program in September 2006. Also, she had given birth to a drug-free baby in September 2005. That child was in her

custody, with no involvement by the Department. Joanna maintained that she was in full compliance with the court's orders and could now provide a safe home for the children. Therefore, she wanted placement of the children with her and termination of guardianship, or, alternatively, reinstatement of "Family Reunification-'like' services" so that she could soon regain custody.

Documents attached to the section 388 petition verified Joanna's recent efforts to change her life. There was a certificate of completion from a parenting program. A letter from the "Joint Efforts Inc." substance abuse program indicated that Joanna would complete the program on September 20, 2006, and had already attended eight individual counseling sessions, 46 group counseling sessions, and forty-eight 12-step meetings. A letter from Joanna stated that she and her 10-month-old baby lived with her mother. She left the baby with Justina while she attended the Joint Efforts program, and her life was "different" since she became involved in that program.

The petition was considered and denied, without hearing, on the ground that "[t]he best interest of the minor(s) would not be promoted by the proposed change of order." The denial was communicated via a July 20, 2006 letter from the court clerk.

A Department report for the next scheduled hearing, August 2, 2006, indicated that the children continued to thrive in Justina's stable and nurturing home. Joanna visited the children daily, helped with their care, and wanted them returned to her. The children enjoyed seeing Joanna and her new baby. The house where Joanna lived with her mother and baby was too small for the other children, but she said she was looking for another house. The report recommended continuing Justina's legal guardianship with a termination of court jurisdiction and continued use of a program called Kin-gap. It also stated, "[M]other is encouraged to file another 388 petition once her circumstances change."

At the August 2, 2006 review hearing, the court followed the Department's recommendation. In reference to the section 388 petition, the court stated, "I am going to be denying it until the mother actually finishes the program and has a couple of months past the program, and then we will take another look at it if appropriate. But at this time I am prepared to close the case with Kin-gap in place." This appeal followed.

We have reviewed the superior court file, to determine if there were events after the August 2, 2006 hearing that render this appeal moot. There were no such events.

DISCUSSION

Subdivision (a) of section 388 authorizes a petition for modification of a prior dependency court order “upon grounds of change of circumstance or new evidence” “If it appears that the best interests of the child may be promoted by the proposed change of order . . . the court shall order that a hearing be held” (§ 388, subd. (c).)

A juvenile court’s ruling on a section 388 petition will not be disturbed unless an abuse of discretion is clearly established. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) “ ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ ” (*Id.* at pp. 318-319, quoting *Walker v. Superior Court* (1991) 53 Cal.3d 257, 272 & *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.)

“If the petition states a change of circumstance or new evidence and it appears that the best interest of the child may be promoted by the proposed change of order,” the section 388 petition may be granted. (Cal. Rules of Court, former rule 1432(c), current rule 5.570(e).) The petitioner has “the burden of showing not only changed circumstances but that a change in the child’s placement would be in the best interests of the child” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 48; see also *In re Zachary G.* (1999) 77 Cal.App.4th 799, 807.) If that burden is not met, the petition may be denied ex parte. (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1504-1505; Cal. Rules of Court, former rule 1432(b), current rule 5.570(d).)

Joanna failed to meet the burden here because she failed to show that a change in the prior orders would be in the children’s best interest. Children need stability and continuity. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) Amanda, Jacob and Mary were thriving in Justina’s stable and loving home, where they had lived for two years. The recent improvements in Amanda’s problems with anxiety and sleep disturbances could be adversely affected by a change in the previous orders, since Amanda feared that she would

be removed from Justina's home. Joanna had only recently begun to help with the children's care at Justina's home, instead of simply playing with them. She had been working seriously on her addiction problem for only six months, after years of drug abuse and avoidance of her parental responsibilities. She had not been truthful with the Department's workers, and had not attempted to comply with the court orders for drug testing and a treatment program until months after the section 366.26 hearing. She did not currently have housing that was suitable for the children, as she was living in a one-bedroom apartment with her mother and the new baby. She claimed she had "been sober since 2/06," but also said that she gave birth to the new baby "in 09/05" which suggests that she used drugs during the first months of the baby's life, even though the baby was born drug-free. She had also used drugs when Amanda and Jacob lived with her, before and after her pregnancy with Mary, even though the Department did not become aware of the problem until the drug tests that accompanied Mary's birth.

We therefore conclude that, from the information that was before it, the court acted well within its discretion when it summarily denied the petition until Joanna showed that she could sustain her recovery from addiction.

Our opinion is not intended to foreclose the filing of a new section 388 petition, as suggested by the trial court, if Joanna makes sufficient progress in recovery.

DISPOSITION

The order denying the section 388 petition of July 20, 2006 is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

FLIER, J.

We concur:

RUBIN, Acting P. J.

BOLAND, J.